

9 NOV 1979

DD/A REGISTRY

FILE: *04M-Executive
Committee
file*

(B) REFERENCE

MEMORANDUM FOR: Deputy Director of Central Intelligence

VIA: Acting Deputy Director for Administration

FROM: Harry E. Fitzwater
Director of Personnel

SUBJECT: Agenda Item for the Executive Committee -
Discussion of Agency Overtime Policy

REFERENCE: Memo for D/Pers fr DD/NFAC, dtd 22 Oct 79,
subj: IR 20-29

1. In a recent memorandum to me, the recently reassigned Deputy Director for National Foreign Assessment expressed his strong support of an NFAC MAG recommendation for a change in the Agency policy which currently limits overtime payments for GS-12 to GS-15 employees to those hours worked in excess of 48 in a given workweek. The subject of the Agency's overtime policy has been reviewed periodically by senior management and has been consistently reaffirmed. The most recent reexamination occurred in 1977 and I have attached material relating to that review, including a 1975 OGC opinion confirming the legality of the policy. Nevertheless, the reappearance of Agency overtime policy as an issue merits its reconsideration by the Executive Committee. Consequently, I propose that this subject be included on a forthcoming agenda of the Executive Committee.

2. In regard to the material which is attached, we have been unable to locate any record of Mr. Knoche's written approval of the continuation of the "eight-hour donation" aspect of the Agency's overtime policy. Nevertheless, the available evidence supports the conclusion that he agreed at some point in June 1977 that the policy should not be altered.

Harry E. Fitzwater

Harry E. Fitzwater

Atts

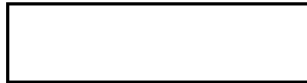
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22 OCT 1979

MEMORANDUM FOR: Director of Personnel

FROM : John J. Hicks
Deputy Director
National Foreign Assessment Center

SUBJECT



1. The NFAC Management Advisory Group has sent a proposal to me that a review be made of the requirement that the first eight hours of overtime in each pay period be donated time under the provision of [redacted] I concur in this recommendation.

2. NFAC has many people in the GS-12 to GS-15 grade range who must work a few hours of directed overtime from time to time to meet crisis reporting deadlines. In the interest of equity I believe these people should be given compensation for time worked.



John J. Hicks

Attachment:
NFAC MAG Proposal

ADMINISTRATIVE-INTERNAL USE ONLY

Approved For Release 2002/08/28 : CIA-RDP92-00455R000100130011-9

24 September 1979

MEMORANDUM FOR: Deputy Director, NFAC
FROM : NFAC Management Advisory Group
SUBJECT : Donated Overtime Rule of
Headquarters Regulation

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1. The NFAC MAG believes Headquarters Regulation [redacted] which restricts payment for directed overtime of Agency personnel in GS-12 through GS-15, is not conducive to the most effective utilization of Agency personnel resources. This regulation requires affected personnel to donate the first eight hours of overtime, except under certain conditions. This provision is apparently unique among federal agencies and the fact that this "uniqueness" is persistently raised indicates some concern by those affected. At NPIC, for example, a DIA supervisor of a CIA employee can be paid for every hour of overtime, while the CIA employee is not paid for the first eight hours. There is a temptation to circumvent the donated overtime provision of the current regulation by fudging entries on time sheets, an unauthorized practice according to the Office of Personnel. (A-IUO) 7

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2. In the memorandum documenting the last review of this Regulation by the Office of General Counsel, mention is made of an inter-Directorate Overtime Committee that was formed in 1969 to review Agency overtime policy. The representatives on this Committee were each appointed by and directly represented their respective Deputy Directors. The major recommendation of this Committee unanimously favored elimination of the donated overtime rule and amendment of Agency Regulation to conform to standard U.S. laws regarding overtime. We recommend that a similar group could be formed, with a MAG representative, to again review [redacted] with a view to recommending the removal of the donated overtime provision. (A-IUO)

[redacted]
Chairman

NFAC Management Advisory Group

MEMORANDUM FOR: Executive Advisory Group Members

SUBJECT : Minutes of the 14 June 1977 Executive
Advisory Group Meeting.

1. The Executive Advisory Group (EAG) met on 14 June 1977 to discuss personnel management issues. Mr. Knoche was unable to attend.

2. The first issue, previously discussed at the 10 May meeting, was the Agency's unique overtime policy, by which CIA restricts overtime compensation for personnel in grades GS-12 and above to payment only after the first eight hours of overtime. The EAG had deferred making a decision on changing this policy, to conform with practices of other Government agencies, pending an estimation of financial implications. The Office of Personnel (OP) had since pointed out that this could not be done properly except through a survey or a time-and-attendance report trial period. Mr. Taylor said he could provide only a very rough estimate of cost: about \$1-2 million per year. Dr. Stevens asked what benefits the Agency provides its employees that might compensate them for their disadvantage with respect to overtime. Several such benefits were identified by Messrs. Blake, Janney, and [redacted] EAG members did not sense that employees were particularly upset about CIA's policy; there seemed to be no pressing reason for change. It was determined to convey this issue to Mr. Knoche for his final decision.

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3. The second issue was the Agency's single-grade promotion policy, which disallows the two-grade-at-a-time promotion of professionals between grades GS-07 and GS-11, which other Government agencies practice. EAG decision on this, too, had been deferred at the 10 May meeting until a cost estimate could be determined. OP had constructed an estimate of \$710 thousand yearly. EAG members expressed differing views on the merits of changing the policy. Complaints were most vocal in NPIC. It was agreed that OP should assess the impact of a policy change on employees currently in grades GS-08 and GS-10, prior to a decision.

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Mr. Taylor reminded Mr. Knoche
had asked that he and Mr. Janney consult with the EAG
on his list of 15 suggested personnel management topics,
in order to launch work on priority items. In Mr. Knoche's
absence, Mr. Taylor said he and Mr. Janney recommended that
the EAG concentrate first on a review of the Agency's
senior-graded employees. The need for such review is
emphasized by the prospect that many of these employees
may be expected to retire within the next three years.
A proposed procedure for accomplishing the review was
discussed. The EAG approved the general approach and
agreed upon several changes in procedure. Mr. Janney
was asked to re-write the procedure within the next few
days and set a definite time schedule for reviewing the
four grades involved.



James H. Taylor
Secretary

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cc: Mr. Janney

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MEMORANDUM FOR: Secretary, Executive Advisory Group

FROM : F. W. M. Jamney
Director of Personnel

SUBJECT : Cost Estimates Relative to Consideration of Possible
Changes in Agency One-Grade Promotion and Over-
time Compensation Policies

REFERENCE : Requirement generated at EAG meeting on 10 May 77

In response to the request generated at the EAG meeting of 10 May 1977 for cost estimates relative to consideration of possible changes in current Agency overtime compensation and one-grade promotion policies, the following information is provided:

- (1) Cost estimates of all non-compensated overtime performed by GS-12's and above if allowed by Agency policy.

Data relative to the amount of non-compensated hours of overtime work performed by employees GS-12 and above is not recorded in time and attendance reports and is not available in either the Office of Finance nor the Office of the Comptroller's records.

Data necessary to develop compensation cost estimates for non-compensated overtime performed can be developed by either conducting a survey of GS-12's and above--a course of action not recommended at this time--or by instituting a special time and attendance report for a specified period of time to develop a data base from which cost estimates could be established. All compensated overtime paid to GS-11's and below and GS-12's and above (in excess of 48 hours of work) recorded by the Office of Finance in CY-1976 amounted to \$6,987,071.

- (2) Cost estimates relative to policy change of one grade to two grade promotions (GS-07 through GS-11 level).

Comparisons based on Calendar Year 1976 promotion data based on pay rates effective 10 October 1976.

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a. Comparative costs of actual promotions in CY-1976 under single grade versus two grade policy.

	<u>GRADE</u>	<u>NUMBER</u>	<u>COST PER PROMOTION</u>	<u>TOTAL</u>
(1) Single grade policy	GS 07-08 GS 09-10	<div style="border: 1px solid black; width: 350px; height: 100px;"></div>		
(2) Two grade policy	GS 07-09 GS 09-11			

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b. Additional annual costs under two grade policy.

<u>GRADE</u>	<u>ADDITIONAL COST</u>
GS 07-09	\$250,792
GS 09-11	\$459,600
TOTAL	\$710,392

(Signed) F. W. M. Janney
F. W. M. Janney

Distribution:

Orig - Adse
14 - Other EAG members
1 - Comptroller
1 - DD/A
2 - D/Pers
1 - OP/P&C

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OP/P&C cxc (27 May 77)

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11 MAY 1977

MEMORANDUM FOR: Executive Advisory Group Members

SUBJECT : Minutes of the 10 May 1977 Meeting of the Executive Advisory Group

1. The Executive Advisory Group (EAG) met on 10 May 1977 to discuss three personnel management issues.

2. The first two issues, the Agency's single-grade promotion policy and its overtime policy, were raised in a memorandum by the Director of Personnel (EAG 12/j), following a review of administrative differences in handling CIA and DIA imagery analysts at NPIC. Summarizing his recommendations, Mr. Janney urged that the Agency as a whole return to a two-grade-at-a-time policy for promoting professionals from grade GS-07 to GS-11, which would be in accord with the standard practice of other agencies. With respect to overtime, he recommended reconsideration of the policy by which CIA restricts overtime compensation for personnel in grades GS-12 and above to payment only after the first eight hours of overtime. At Mr. Blake's suggestion, Mr. Knoche asked the Office of Personnel and the Comptroller to perform an analysis of the financial implications of these proposed policy changes. With this information, the EAG would re-examine the two issues at the first EAG meeting in June.

3. The third topic was a paper by the Comptroller (EAG 12/i), which recommended that the Agency employ a consultant to study our personnel management system and make suggestions for its improvement. Mr. Janney commented that the system was in fact improving steadily and cited the several initiatives which have been undertaken in recent months with the benefit of EAG guidance. The EAG agreed to re-examine the recommendation at a later date, in view of the many related actions which are pending.



Acting Secretary
Executive Advisory Group

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cc: ✓ Mr. Janney

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NOTE FOR: Deputy Director of Central Intelligence

SUBJECT : EAG Session on Personnel Management, Scheduled
for 10 May 1977

Hank:

At tomorrow's EAG meeting we will discuss three personnel management issues: (1) contracting for an externally-conducted study of the Agency's personnel system, (2) the Agency's single-grade promotion policy for personnel in grades GS-07 to 11, and (3) the Agency's overtime policy. I suggest we address them in that order.

Jim Taylor circulated a memo (EAG 12/i) to EAG members on the first topic, at your request, in which he recommends that we contract for an externally-conducted study, under the auspices of the Inspector General, which would examine our personnel system objectively and develop recommendations for its improvement. He includes several suggested issues/questions which should be considered in such a study. Jim conveyed to me his most recent feelings on this matter on Friday. He feels that if EAG consensus favors postponing this action for a few weeks he would be in favor. I will expand on this a bit tomorrow afternoon when we meet for our pre-briefing session.

The latter two topics, discussed in a memo (EAG 12/j) by Fred Janney, result from a review of the administrative differences in handling CIA and DIA imagery analysts at NPIC, undertaken at your request. OP holds that if promotion and overtime policies are changed, they should be changed for the entire Agency.

CIA has unilaterally established a single-grade promotion policy for professional personnel in grades GS-07 to 11, which, in contrast to established CSC policy (followed by DIA), dictates that professional employees be promoted from GS-07 to GS-11 in four actions. OP points out that most employees would prefer the two-grade-at-a-time system. The present policy, however, has been repeatedly reaffirmed by Agency management. OP again recommends change.

CIA has also established its own overtime pay policy, which contrasts with that of the CSC. OP does not recommend that we change our 40-hour per week straight-pay concept, but it does recommend, again, a reconsideration of the policy which restricts overtime compensation for personnel GS-12 and above to payment only after the first eight hours of overtime, which must be "donated" when directed. This policy, OP points out, has also been repeatedly reaffirmed by Agency management.

I would recommend that Fred be given the opportunity to state his recommendations briefly on these two topics prior to discussion.

NPIC/D-159/77

APR 5 1977

MEMORANDUM FOR: Deputy Director of Central Intelligence

THROUGH : Director of Personnel
Deputy Director for Administration

SUBJECT : Disparities Between CIA and DIA Personnel Policies/
Practices at NPIC

REFERENCE : Memo for DDA from Director of Personnel, dated
1 March 1977, Same Subject

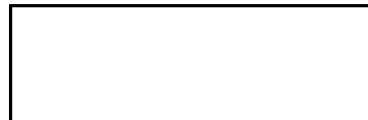
I have reviewed the referenced study by the Director of Personnel
and offer the following comments:

a. Overtime

The disparity between CIA and DIA in overtime compensation does not present serious morale problems at NPIC. We can live with the current situation.

b. Promotions

The promotion disparity in grades GS-07 - GS-11 is a problem and NPIC needs relief. I recommend that CIA adopt the standard Civil Service procedure for two-grade promotions for professional personnel between GS-07 and GS-11.



JOHN J. HICKS

Director

National Photographic Interpretation Center

STATINTL

1 MAR 1977

COMPT. 77-0654

MEMORANDUM FOR: Deputy Director for Administration

FROM : F. W. M. Janney
Director of PersonnelSUBJECT : Disparities Between CIA and DIA Personnel
Policies/Practices at NPICREFERENCE : Memo for DD/A fr D/Pers dtd 24 Jan 77, subj:
Report of Voluntary Separation GS-12 and Above
Staff Employees, Transition Quarter FY 76

1. The review of the administrative differences in handling Agency and DIA Imagery Analysts at NPIC has now been completed. The underlying basis for the differences are the provisions of the Civil Service regulations applicable to DIA personnel and the policies unilaterally established in CIA. The apparent inequities are significant in only two areas, the single grade promotion and the overtime policies of the CIA. The two matters are discussed below and are followed by a recommendation.

2. Promotion.

a. DIA promotes on the two-grade policy of the Civil Service for professional personnel in grades GS-05 to GS-11, and has established a one-year minimum time-in-grade for each promotion. This permits an employee to progress at the optimum from grade GS-07 to GS-11 in 24 months, with the average time approximately 30 months. The NPIC Imagery Analyst normally cannot go from GS-07 to GS-11 in less than 42 months, with the normal time for the past three years being 60 months. The DDS&T time-in-grade guidelines for promotion from GS-07 to GS-08 and from GS-08 to GS-09 is nine months; for promotion from GS-09 to GS-10 and GS-10 to GS-11, it is 12 months. The time-in-grade requirement may be waived for exceptional cases. These times-in-grade are not unreasonable in terms of the Agency's one-grade promotion policy at these levels; less time would negate any purpose of the practice.

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b. Comparing the average time for the progression from GS-07 to GS-11 for the Imagery Analysts in NPIC to the average time for these grades in the Agency and in the Career Services, we find the progress of the NPIC personnel is considerably more rapid. The APP figures for FY 74, 75 and 76 for the Agency, and the Career Services, are shown below. In addition, the report for DDI/OIA, the other Agency office having Imagery Analysts, reflects an average time-in-grade for promotion from GS-07 to GS-11 for the past three years is 75 months (6.3 years).

Average Time to Progress From GS-07 to GS-11

	<u>FY 74</u>	<u>FY 75</u>	<u>FY 76</u>
DDS&T	7.3 years	6.2 years	8.58 years
DDA	7.6	7.2	7.5
DDI	6.6	7.3	5.3
DDO	8.9	8.9	9.3
AGENCY	7.8	7.3	7.3

The above figures were obtained by adding the individual time-in-grade averages and cannot be viewed as true averages; they are provided here only to give a broad overview of the situation elsewhere in the Agency. A more accurate analysis for a direct comparison with the NPIC Imagery Analyst progression would require tracing individual employees in the Career Services.

We are advised by representatives of the DDI, DDA and DDO that none of these Career Services have established time-in-grade requirements at these grades, though in practice, with exceptions when merited, a year in grade is a basic rule of thumb.

c. In reviewing options available for solving NPIC's apparent problem, we find only one worth further consideration, e.g., a change in Agency policy for one-grade promotions from GS-07 to GS-11. It would not be equitable nor evidence of a sound personnel management system to waive the policy for Imagery Analysts, for NPIC or for the DDS&T alone, hence only a change in Agency policy should

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be considered if the problem is judged to be of such magnitude as to warrant a remedy of this scope. The current situation in NPIC involves about 23 DIA and approximately 100 CIA GS-11 and below employees.

d. In this regard, however, it should be noted that as recently as March 1976 the one-grade promotion policy was reaffirmed by Agency management. The Director of Personnel had recommended in a memorandum to the DD/A that the policy be changed in recognition of the changing conditions of the Agency's professional personnel complement. Mr. McMahon, the then ADD/A, contacted the other Directorates to obtain their views relative to a change and only the DDI supported the Office of Personnel position. More recently, the MAG in its 7 December 1976 paper made the same proposal to change to the two-grade schedule. Again the DDI supported this position and DDS&T clearly opposed any change.

e. The study of the NPIC situation indicates that while there may be some disgruntlement with the differing promotion policies of the DIA and CIA, there is little active reaction. Of the 16 NPIC Imagery Analysts who separated from the Agency in 1975-76, only three left for what appear to be better jobs: one went to a GS-13 position at the State Department, one went to industry and one went into business for himself. None of the GS-07 through GS-11 employees who resigned gave promotion restrictions as a reason; in fact, the location [] and to return to school were the most frequent reasons. The employee who transferred to the State Department is the only one who mentioned promotion differences in his exit interview (he was a GS-12) and this was only one among other comments he had to make on the Imagery Analyst situation at NPIC.

3. Overtime

a. The other basic difference between the practices of the two agencies is in the area of overtime compensation. DIA pays overtime for the time worked in excess of the eight hour workday; CIA employees are compensated in accordance with [] which limits overtime pay to hours worked in excess of a normal basic workweek and further restricts overtime compensation for personnel in grades GS-12 and above to payment only after the first eight hours of overtime. DIA GS-15 personnel are authorized overtime under the same rules as lower graded personnel; GS-15 personnel in CIA receive overtime pay only under the second job concept. The nonstandard workweek [] is the source of the significant overtime compensation difference. As the nonstandard schedule there operates, DIA personnel receive straight pay for 32 hours and overtime for the other eight hours; CIA employees receive straight pay for the whole 40 hours. It is interesting to note DIA makes the payments although its own

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instructions do not appear to authorize it. The explanation is the overtime payment is in conformance with Civil Service regulations. Due to pay scales for overtime, employees in grade GS-12 step 5 receive the same amount for overtime and straight pay. The overtime compensation received by DIA personnel [redacted], therefore, impacts again only on the CIA employees in the lower grades. None of these positions is NON-EXEMPT; hence, FLSA rules do not apply.

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b. The matter of the "donated" eight hours of overtime for GS-12 and above personnel has been reviewed numerous times in the Agency and each time the Deputy Directors reaffirmed the policy. As a practical matter, a change in the 40 hour concept to overtime paid after eight hours of a single workday would, we understand, cause considerable restructuring of the payroll system by the Office of Finance.

4. Summary and Recommendation

a. In summary, the only way to equalize the promotion and overtime policies and practices of DIA and CIA would be to change Agency policies in these two areas.

b. While the Office of Personnel continues to recommend a change in the one-grade promotion policy, no claim is made that this would significantly reduce the time it would take an employee to progress from GS-07 to GS-11. The impact of the Agency's competitive promotion policy on the availability of headroom in the various grades as controlled by the CSGA must be recognized. It well may be that in some offices and Directorates the progress to GS-11 would be no faster than it is under the current system, and the employee would lose the benefit of the inbetween grade salary during the waiting period for the higher grade. On the other hand, there may be components where the CSGA would permit a more rapid progress and the overall benefits to the employee would be greater. A change would also have the benefit of responding to employee complaints and concerns that the Agency policy in this area is different from the rest of Government. Most employees see the two-grade system as a benefit and do not recognize, despite explanations in as many training courses as can accommodate the subject, the purpose and ramifications of the competitive promotion system.

c. Again, despite the numerous times it has been reviewed, we recommend a reconsideration of the eight hours "donated" overtime policy. We believe Agency management should recognize its responsibility for directed overtime work and compensate all grades eligible by statute for work performed.

[Redacted Signature]

F. W. M. Janney

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OGC 75-4294

20 November 1975

25X1A MEMORANDUM FOR: [] Deputy Director of Personnel

SUBJECT: Mr. Colby's Question Relating to GAO Position on
the Agency's Overtime Policy

25X1A REFERENCE: MR [] 12 Dec 74, OGC 74-2338, Subj:
CIA Policy on Overtime Compensation

1. This is in response to your request to the undersigned to clarify the apparent inconsistency which exists in referent memorandum concerning GAO's position on the Agency's overtime policy. Specifically, at Paragraph VI, Subparagraph 3, Page 27, I stated: "A second point which emerges is that competent legal authorities within the Civil Service Commission and GAO apparently have shared our position." The reference is to the Agency's position on overtime and the so-called "eight-hour donation rule." At Paragraph IV, Subparagraph 3B, Pages 17 and 18, I quoted a 30 January 1964 memorandum by [] a former attorney with the Office of General Counsel, to-wit:

I also discussed the applicability of the Pay Act to CIA with Mr. Pat Friend, General Counsel's Office, GAO. Mr. Friend was of the opinion that if GAO were asked for a formal ruling, it would hold that CIA was under the Act. He also emphasized that it was his belief that the Section 8 language relating to 'personal services' was intended to exempt the Agency from prohibitory statutes but not from statutes granting entitlements to Federal employees. Mr. Friend was cautious about committing himself to an opinion either way, and suggested that if CIA wanted anything definite the question should be formally forwarded to GAO for an opinion.

This was an isolated, informal discussion between a middle level attorney in the Office of General Counsel and his counterpart in the Office of General Counsel at GAO.

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2. At Paragraph IV, Subparagraph 1, the last sentence, Page 11, I stated that the eight-hour donation rule had been "informally cleared with the General Counsel to the Comptroller General and with members of his staff." At Paragraph IV, Subparagraph 2D, Pages 13 and 14, I quoted the 28 January 1959 opinion of the CIA General Counsel, Mr. Houston, to the Deputy Director of Support, which discusses this clearance with the General Counsel of GAO and members of his staff:

The attached draft of a proposed regulation on overtime has been reviewed by this Office and discussed with the General Counsel to the Comptroller General. With his approval, it was further reviewed with members of his staff who were of the same opinion as we that there was no legal objection to the adoption of this proposal.

It was on the basis of this 1959 Houston memorandum that I made the concluding statement about GAO having apparently shared the Agency's position on its overtime policy, believing it (the memorandum) carried considerable more weight than [redacted] 1964 memorandum of an informal conversation.

3. I have attached copies of both Mr. Houston's [redacted] memoranda for your review. If I can be of any further assistance in clarifying this matter, please call me.

[redacted]

Assistant General Counsel

Att

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Comptroller General
General Counsel
Dep. Gen. Counsel

Details discussed with staff:

Assoc. Gen. Counsel -
Asst. Gen. Counsel -
Attorney -

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28 January 1959

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Proposed Regulation on Overtime Compensation Policies

1. The attached draft of a proposed regulation on overtime has been reviewed by this Office and discussed with the General Counsel to the Comptroller General. With his approval, it was further reviewed with members of his staff who were of the same opinion as we that there was no legal objection to the adoption of this proposal.

2. We all feel that we might be subject to suit by employees under the overtime compensation provisions of the Federal Employees Pay Act Amendments of 1954. The outcome of such a suit is uncertain and would probably depend upon the facts in any one case. It is possible that a court would feel it illogical to pay overtime for hours in excess of 48 but not for hours between 40 and 48. It might raise the question of how we determined which of the hours worked were overtime for pay purposes and which were gratuitous. The proposal as a whole appears well designed to meet the needs of the Agency and to be in the general interest of good Government administration. Since there is no assurance that any suit will be filed or if filed that it would necessarily be successful, we do not feel that this consideration should stand in the way of implementing the proposed procedure.

LAWRENCE R. HOUSTON
General Counsel

Att-Subject Regulation

OGC: OEP: LRH: jeb

cc: Director of Personnel w/att

Comptroller w/att

OGC chrono OGC subject-P&A 9 OGC

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(4)

30 January 1964

MEMORANDUM FOR THE RECORD

SUBJECT: Applicability to CIA of Federal Employees Pay Act of 1945--discussions with Civil Service and GAO

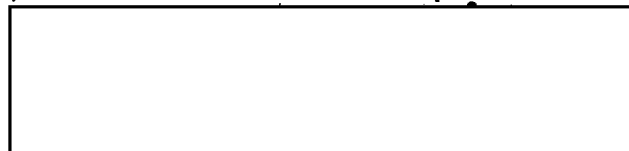
1. Recently, on an informal basis, I have discussed with Miss Trickett of the General Counsel's Office at the Civil Service Commission the Civil Service Regulation (FPM Supplement 990-1, Section 550.101(b)(8)) which exempts CIA from the provisions of the Civil Service Regulations issued pursuant to the Federal Employees Pay Act of 1945 (FPM Supplement 990-1, Sections 550.101 - 550.164). I inquired why Civil Service had exempted CIA from the regulation, and whether in light of the exempting regulation Civil Service felt CIA was exempt from the Pay Act.

2. After thoroughly researching the records at Civil Service, Miss Trickett advised me that they contain no comment whatsoever regarding the exemption for CIA from the Pay Act, which was first adopted in August 1950, nor was there any correspondence between CIA and Civil Service regarding the exemption at the time it was put into the regulation. It is her conclusion that the exemption was given without "conscious considerations" and that it was "a fluke, an accident." She commented that she did not believe the exemption could be legally justified, and that if the Commission were to review the matter the exemption would probably be removed from the regulations. She believes that despite the exemption in the regulations the Agency remains subject to the statute itself. If a dissatisfied employee were to sue the Agency in the Court of Claims for benefits not provided the employee but available to Government employees generally under the Pay Act,

she did not feel a ~~license~~ based on Section 8 of the CIA Act would prevail. ~~Approved For Release 2002/08/28 : CIA-RDP92-00455R000100130011-9~~ "personal services" was intended to free the Agency from prohibitory statutes but not statutes providing entitlements for Government employees.

3. Miss Trickett stated that in 1949 Civil Service gave extensive consideration to whether or not CIA should be exempt from the Classification Act of 1923. At that time the head of the Classification Division argued that CIA should be exempt because of Section 6 and Section 8 of the CIA Act, because it was impractical not to exempt CIA (The Agency refused to provide sufficient information), and because an exemption was written into the proposed Classification Act of 1949. Against the written protest of Mr. Klein, Chief Counsel to the Commission, the Commission approved the exemption. Shortly thereafter a similar exemption was written into a revision of the regulation adopted pursuant to the Federal Employees Pay Act of 1945. Miss Trickett believes this latter exemption was added by a low level official acting under the mistaken belief that the same considerations applied to CIA's position under the Pay Act as applied under the Classification Act. She feels it was overlooked when the revised regulation was reviewed by senior officials.

4. I also discussed the applicability of the Pay Act to CIA with Mr. Pat Friend, General Counsel's Office, GAO. Mr. Friend was of the opinion that if GAO were asked for a formal ruling, it would hold that CIA was under the Act. He also emphasized that it was his belief that the Section 8 language relating to "personal services" was intended to exempt the Agency from prohibitory statutes but not from statutes granting entitlements to Federal employees. Mr. Friend was cautious about committing himself to an opinion either way, and suggested that if CIA wanted anything definite the question should be formally forwarded to GAO for an opinion.



Office of General Counsel

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